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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 71-987

AUSTIN RANDALL MOODY

v.

THELMA RUTH MOODY

PETITION FOR REHEARING

BENJAMIN D. LUCAS,
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AUSTIN RANDALL MOODY

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THELMA RUTH MOODY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE THIRTEENTH SUPREME JUDICIAL DISTRICT OF TEXAS

PETITION FOR REHEARING

The Petitioner herein respectfully moves this Court for an order (1) vacating its denial of the petition for writ of certiorari entered on March 20, 1972, and (2) granting the petition. This petition is not filed for the purpose of delay, but to submit to this Court two (2) decisions, published subsequent to February 3, 1972, the date on which petitioner filed his application for a writ of certiorari. As grounds for this motion, petitioner respectfully requests

the court to consider the two (2) following recent decisions, published subsequent to petitioner's application filed February 3, 1972.

REASONS FOR GRANTING REHEARING AND ISSUING THE WRIT

At the time petitioner filed this application February 3, 1972, and this court denied petitioner's writ, March 20, 1972, there were no decisions on the points sought to be reviewed. Since said dates, and times, a direct and explicit conflict has arisen.

1. The Court of Civil Appeals for the Fifth Supreme Judicial District of Texas, sitting at Dallas, Texas, announced its unanimous decision in, William James Ranford v. Betty Jean Ranford, recently published in 475 S. W. 2nd, 590, holding that : The trial court has no authority, in Texas, to render a personal judgment for arrearage in a support case as Civil Contempt is the only remedy for enforcement. (Texas Civil Statutes, Art. 4639a). This recent decision is in direct conflict with the judgment of the trial court and court of appeals in this case.

2. The Court of Civil Appeals for the Second Supreme Judicial District of

Texas, sitting at Fort Worth, Texas, announced its decision, which decision, has not yet been published in book form, the case of, James B. Nail, Jr., v. Alice J. Nail, Vol. 477 S.W. 2nd 395, holding, with the Chief Justice descenting, that installment payments, an estimated value of doctors good will, was not alimony. The Court was most definite as to "permanent alimony that it is against the public policy of the state and therefore void and unenforceable,***-

"The law in Texas is that our courts are not authorized to order the payment of permanent alimony. A court order requiring the payment of alimony after the parties are divorced is invalid, unenforceable and is against the public policy of the state. Francis v. Francis, 412 S.W. 2nd 29 (Tex. Sup., 1967) and McElreath v. McElreath, 345 S.W. 2nd 722 (Tex. Sup., 1961).

In defining 'permanent alimony' that is illegal in Texas the Supreme Court in Francis v. Francis, supra, said: ". . . alimony which contravenes the public policy of the state in only those payments imposed by a court order or decree on the husband as a personal obligation for support and sustenance of the wife after a final decree of divorce."

Petitioner re-urges, United States Constitution, Art. 4 § 1, and Amendment 14.

The foregoing authorities are germane to questions Nos. 1 & 6, P-2 & P-6; assignments of error XX, XXI, & XXV of Defendant's Motion, for New Trial; and points of error, 24, 25, 26, 27, 28, 29 & 30, of Appellant's Brief in the Thirteenth Court of Civil Appeals of Texas sitting at Corpus Christi, Texas, from the judgment, of which court petitioner has filed his application for writ of certiorari.

The instant case involves the alleged arrearage in support as alimony, allegedly accumulative monthly, which had not matured; the trial court was without authority to render a personal judgment, for Respondent, said judgment being void and completely foreign to any previous decision in Texas, and the court of appeals erred in affirming a void judgment, as is evidenced by the foregoing recent authorities cited above.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Thirteenth Supreme Judicial District of Texas, sitting at Corpus Christi, Texas.

Respectfully submitted,

BENJAMIN D. LUCAS
COUNSEL FOR PETITIONER

CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this court.

COUNSEL FOR PETITIONER

PROOF OF SERVICE

A copy hereof was mailed to THOMAS BLACK, Capital National Bank Building, Austin, Texas, Attorney for Appellee, on April 12, 1972, by CERTIFIED MAIL RETURN RECEIPT REQUESTED NO. 362102.

THE STATE OF TEXAS)
)
THE COUNTY OF BEXAR)

Subscribed and Sworn to by, BENJAMIN D. LUCAS, this 12th day of April, 1972.

NOTARY PUBLIC in and for
Bexar County, Texas